

**STATEMENT OF CONSIDERATION  
Relating to 803 KAR 25:089  
Amended After Comments**

- I. The public hearing on 803 KAR 25:089 scheduled for October 27, 2010, at 10:30 a.m. (DST), at the Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky, was held by Commissioner Dwight T. Lovan. No public comments were made at the hearing. However, two written comments were received during the public comment period.
- II. The following persons were attendees or offered comment:
  - (a) Dr. Dick Broeg;
  - (b) Jason Chambers, Kentucky Physical Therapy Association;
  - (c) Margaret de Movellan, Kentucky Employers Mutual Insurance;
  - (d) Holly Johnson, Kentucky Physical Therapy Association;
  - (e) Veada Metcalf, Ladegast & Heffner;
  - (f) Linda Pica, Corvel;
  - (g) Dianne Sweeney, Kentucky Employers Mutual Insurance;
  - (h) Leigh Ann Thacker, Kentucky Physical Therapy Association; and
  - (i) Marty White, Kentucky Medical Association.
- III. The following persons from the administrative body were present or responded to comments:
  - (a) Dwight T. Lovan, Commissioner;
  - (b) Charles E. Lowther, General Counsel;
  - (c) Lucretia Johnson, Director, Ombudsman/Workers' Compensation Specialists Services Division;
  - (d) Derrick Hill, Supervisor, Technical Support Section;
  - (e) Pam Knight, Supervisor, Medical Services Branch;
  - (f) Candace Sacre, Office of General Counsel;
  - (g) Shari Lafoe, Ombudsman/Workers' Compensation Specialists Services Division;
  - (h) Lyn Roark, Ombudsman/Workers' Compensation Specialists Services Division;
  - (i) Kelly Tharpe, Ombudsman/Workers' Compensation Specialists Services Division; and
  - (j) Sherry Wilson, Ombudsman/Workers' Compensation Specialists Services Division.

## **SUMMARY OF COMMENTS AND RESPONSES**

### **1. SUBJECT MATTER: Clarification of Definition of "Invoice"**

(a) Comment: Margaret de Movellan, Kentucky Employers' Mutual Insurance (KEMI), submitted a written comment on behalf of KEMI. She suggested that the term "invoice" needs further explanation. The schedule requires payment for durable medical equipment at "invoice plus 20 percent or manufacturers' suggested invoice plus 20 percent, whichever is less." Ms. de Movellan suggested there is uncertainty among providers and insurers as to what constitutes an invoice.

(b) Response: The term "invoice" in question has a common meaning definition as being a bill for services or products that have been provided according to the payment terms. The Department of Workers' Claims notes that no significant issue has been raised regarding the term "invoice" over the two years existence of this regulation. If a specific invoice was legally questioned, an administrative law judge would need to make a determination regarding the issue at hand.

### **2. SUBJECT MATTER: Reimbursement for Supplies**

(a) Comment: Margaret de Movellan, Kentucky Employers' Mutual Insurance (KEMI), submitted a written comment on behalf of KEMI. She suggested that the method by which insurers are to reimburse for supplies outside DME (orthotics, implants, glasses, hearing aids, etc.) should be clarified. The schedule provides for payment for such supplies "by report." Ms. de Movellan expressed concern that the method is subjective and will result in inconsistent rates being used.

(b) Response: The payment for reimbursement of medical supplies on a "by report" or "BR" basis is done in order to allow for the usual and customary cost in the area to be taken into consideration. The insurer may either accept the stated cost or offer an alternative based upon the usual and customary standard.

### **3. SUBJECT MATTER: Ambulance Fee Schedule**

(a) Comment: Margaret de Movellan, Kentucky Employers' Mutual Insurance (KEMI), submitted a written comment on behalf of KEMI. She requested explanation as to how the proposed ambulance fee schedule, which is set at 130 percent of Medicare allowable was determined. She asked for an explanation as to the basis for the increase in rates, mileage,

and "presumably cap on charges" and how the final percentage was determined.

(b) Response: The ambulance fee schedule in question was only added in the fee schedule adopted two years ago. When this fee schedule was drafted, the wrong information was inadvertently included. Ambulance companies were required to be paid at cost at the Medicaid rate when it was supposed to be the Medicare rate. A correction was necessary to bring the fee into a reasonable payment range. While the 130 percent of Medicare allowable seems high, the entire Kentucky fee schedule averages 131 percent of Medicare across the state.

4. SUBJECT MATTER: Incorporated Material

(a) Comment: Matt Menning, American Medical Association, submitted a written comment regarding the Medical Fee Schedule incorporated by reference in 803 KAR 25:089, Section 5. He indicated that the CPT guidelines, notes, and instructions had to be removed before the Medical Fee Schedule would be acceptable to the AMA.

(b) Response: The Department of Workers' Claims has amended the fee schedule to exclude the questioned language. The AMA has approved the fee schedule as amended in a letter emailed to the Department on November 8, 2010.

**SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY  
THE PROMULGATING ADMINISTRATIVE BODY**

The public hearing was held and comments were solicited but none were given at the hearing. However, two (2) written comments were received. The Department of Workers' Claims responded to the comments and will be amending the administrative regulation. The amendments pertain to the medical fee schedule incorporated by reference in Section 5 of this regulation.